

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

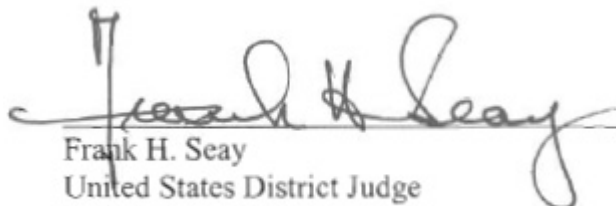
DIANE MORRIS, individually and)	
on behalf of the Estate of BILLY)	
JOE PHILLIPS, deceased, and DALY)	
A. PHILLIPS, deceased, minor,)	
)	
Plaintiff,)	
)	
v.)	No. CIV-05-390-FHS
)	
UNION PACIFIC RAILROAD COMPANY,)	
a foreign corporation,)	
)	
Defendant.)	

ORDER

Defendant has filed a motion for summary judgment seeking an adjudication in its favor based on the Oklahoma Supreme Court's holdings in Hamilton v. Allen, 852 P.2d 697 (Okla. 1993) and Akin v. Missouri Pacific Railroad, 977 P.2d 1040 (Okla. 1999). Relying on these cases, Defendant argues that Plaintiff's violations of Oklahoma statutes regarding stopping or yielding to an approaching train at a railroad crossing and failing to drive at an appropriate reduced speed when approaching such crossing constitute, as a matter of law, the proximate cause of the injuries sustained as a result of the collision between Defendant's train and the vehicle driven by the decedent, Billy Joe Phillips ("Phillips"). Having fully considered the respective submissions of the parties, the Court rejects Defendant's argument and finds there are genuine issues of material facts present in the case including, but not limited to, any violation by Phillips of the cited statutory provisions. In particular, the Court notes the conflicting evidence before it regarding the application of the stop sign to traffic approaching from the access road upon which Phillips was

traveling. Summary judgment is therefore inappropriate and said motion should be overruled. Fed. R. Civ. P. 56; see, e.g., Celotex Corporation v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505 (1986).

It is so ordered this 5th day of January, 2007.



Frank H. Seay
United States District Judge
Eastern District of Oklahoma